On such subjects he will naturally incline to the views of his government, or else to the policy of silence. Mr. Foulke's comments on some of the acts of Germany during the world-war are extremely bitter. The following allusion to Count Bernstorff may serve as an instance. "Count Johann Von Bernstorff, the German Ambassador to the United States, covered himself with infamy in 1914-15-16 by his conduct in participating in the base intrigues of the German Government in violation of the neutrality of the United States of America." (II, 192, n.)

The author holds (I, 479, 480) that

"War between the parties will obviously have no effect on an executed treaty, but where the treaty is executory, will suspend further performance between the parties in so far as the hostile relations interfere with that performance. Where the treaty provides for hostilities, then the performance of the treaty is not prevened by the breaking out of the war. In the treaty of peace terminating the war, the states will confirm or reinstate treaties as they see fit.

"Although the writers have attempted to lay down rules as to what principles are applicable to the revival of treaties on the termination of war, it is believed they have entirely overlooked the facts of the case, which are—that it depends entirely on the agreement of the parties."

This seems to present a confusion of doctrine as to treaties providing for the obligations of the contracting Powers, in case of future hostilities. The performance of such a treaty is said (I, 479) to be "not prevented," yet its revival on the termination of the war "depends entirely on the agreement of the parties." But a treaty expressly declaring a rule of conduct in case of war, must, to give the declaration any meaning, govern in the only state of things to which it is applicable. The United States took that view at the opening of the Spanish war in 1898. Our treaty of 1795 with Spain provided that

"For the better promoting of commerce on both sides, it is agreed, that if a war shall break out between the said two nations, one year after the proclamation of war shall be allowed to the merchants, in the cities and towns where they shall live, for collecting and transporting their goods and merchandizes: And if anything be taken from them or any injury be done them within that term, by either party, or the people or subjects of either, full satisfaction shall be made for the same by the government."

Spain claimed that war *ipso facto* terminated the entire treaty, and we insisted that the rights of merchants for a year remained unimpaired (5 Moore, International Law Digest (1906), 375). The ambiguity in Mr. Foulke's statement is to be regretted, in view of the question raised by German merchants, on the somewhat similar clause in Article XIII of our treaty of 1785 with Prussia.

Mr. Foulke's style is not of the clearest, nor does it always accord with the rules of English grammar. We find, for instance, this huddle of words:

"A State may exist as such, be independent, be a member of the family of nations, as to which see §80, post, and all of which must be clearly distinguished."

The proof reader seems to have done his work badly, particularly in the matter of Latin words. Thus we find *"Not constat"* for *"non constat," "retorsio de juris"* for *"retorsio juris," "jus angarie"* for *"jus angariae," "lex talonis"* for *"lex talionis,"* and *"juri belli"* for *"jure belli."*

The book is well indexed. It has evidently been based on wide reading, and the notes are valuable, but one closes it with the feeling that the author has overshot his mark.

SIMEON E. BALDWIN

STORY'S COMMENTARIES ON EQUITY JURISPRUDENCE. Third English Edition. By A. E. RANDALL. London: SWEET AND MAXWELL, LTD., 1920. pp. xxxvii, 673.

EQUITY: An Analysis and Discussion of Modern Equity Problems. Missouri Edition. By GEORGE L. CLARK. Columbia, Mo.: E. W. Stephens Publishing Co. 1920. pp. lii, 793.

Unlike the editor of the latest American edition of Story, Mr. Randall has succeeded in keeping the work within the limits of one volume. This has been accomplished by omitting those portions of the original text which seemed to him no longer of value, except for historical reasons, for the English lawyer. The place of the omitted passages has where necessary been taken by matter written by the editor. If we must have new editions of Story, this procedure commends itself as far preferable to that followed in the successive American editions, the latest of which fills three large volumes. It is to be regretted, however, that Mr. Randall did not devise some simple expedient to indicate clearly how much of the composite work is by Story and how much by the editor.

The fact that publishers are found who are willing to bring out these new editions of Story seems to indicate that the legal profession on the whole find them useful, but one cannot help thinking that it would be far more helpful to have a wholly new work. The development of our legal system, especially that part of it with which equity is occupied, has been so great since Story's classic treatise was written that even the best editing can result only in a piece of patch-work which does not present an adequate and well-balanced view of modern equity law. American readers will, however, find this new English edition useful in getting at the more recent English cases.

The need for a concise and systematic discussion of the fundamental principles of modern equity law has long been recognized. Mr. Clark's volume is apparently an attempt to meet this need, for he states in the preface: "The main purpose of the following pages is to present, analyze and discuss various equity problems. For this reason no space has been used in accumulating authorities. It is believed that the increasing number of decided cases will sooner or later require that more attention be given to the discussion of principles."

If the achievement of the author falls somewhat below the standard thus set, it is perhaps in part due to the inherent difficulty of the task. Since equity contributed chapters to almost every branch of the law, it is difficult to cover the field in one volume of moderate size, even if one confines the discussion to fundamentals.

In its general arrangement the work follows the order of the material in the case-books upon equity and trusts prepared by the late Dean Ames of Harvard, and a very large proportion of the cases cited and discussed are the ones which are printed in those collections. Partly as a result of this, perhaps, important topics not covered in these case-books are left for the close of the book and receive a far briefer treatment than their importance deserves.

The opening chapter deals with the "limits and nature of equity jurisdiction." Mr. Clark's point of view is substantially that of the "Langdell-Ames-Maitland" school of thought,—that equity (in the absence of statutes) "acts *in personam,* not *in rem*" whereas the common law acts both *in rem* and *in personam,* and that "the decree of a court of equity does not affect the legal right." To begin with, the author's analysis of the meaning of these ambiguous Latin phrases is so brief as to be of little help, at least to beginners, and no reference is given to the literature of the subject where adequate treatment can be found. Nor was the reviewer able to discover any hint that the truth of these supposedly fundamental distinctions has been challenged. Indeed, there is nowhere in the work any adequate treatment of the actual position of modern equity in our legal system and its relations to common law. For example, sufficient account is not taken of the fact that under modern codes of procedure it is frequently the case that facts which formerly furnished grounds for relief in equity by way of injunction against the enforcement of "legal rights" may now be set up as (so-called) "equitable defenses" with the result that an equitable adjudication as to the existence of those facts may be used to establish them as a defense in a subsequent law action,

No reference is made to the fact that an equitable decree for money, rendered in one state has in all recent times been regarded as giving rise to a common law debt in other states. The enforcement of equitable decrees for money by seizure and sale of chattels by sequestrators and the payment of the resulting money to the plaintiff—a proceeding entirely analogous to common law execution—seems not to be mentioned. The application of the dictrine of *res judicata* to equitable adjudications and decrees and the effect in subsequent common law proceedings is, so far as the reviewer can find, not mentioned. The author appears (pp. 9-10) to accept the view of Maitland that common law and equity are not in "conflict," but the problem is not distinctly stated, nor is there even a reference to the fact that such writers as Spence, Pomeroy and Hohfeld have expressed a contrary view, or that this contrary view seems clearly to have been that of the framers of the English Judicature Acts. Surely students of modern equity ought to have the literature upon so fundamental a problem at least brought to their attention.

In the other portions of the work the leading principles and rules followed by equity in the exercise of its jurisdiction are set forth with commendable clearness, but limitations of space prevent the author's discussion of principles from contributing much to the solution of difficult and disputed problems. Throughout there is failure to take sufficient account of changes due to modern statutory law, so that the picture presented is often of equity not as it really is today, but rather as it used to be, or might now have been if these statutes had not been passed. For example, no treatment of the law of trusts today can be adequate which does not take note of the effects of the "real party in interest" and "equitable defence" clauses of modern codes of procedure upon the rights of the *cestui que trust* in common law courts, but this Mr. Clark has failed to do.

In spite of its defects, the book is, however, a welcome addition to our list of works on equity, constituting as it does, the only recent one-volume treatment of the subject. It would have been still more useful if a more thorough examination had been made of the more recent cases, for at several points the actual state of the authorities is not adequately presented through a failure to notice important recent decisions.

The book is well printed and bound and equipped with an index which seems adequate, but is marred at points by careless proof reading. The appendix of Missouri notes contains a summary of the Missouri decisions and makes the volume especially useful for practicing lawyers in that jurisdiction.

WALTER WHEELER COOK

AN INTRODUCTION TO THE STUDY OF THE GOVERNMENT OF MODERN STATES. By W F. WILLOUGHBY, New York: THE CENTURY COMPANY. 1919. pp. vii, 455.

The method of this book—topical, analytical, comparative, general—falls in with an undoubtedly widely felt reaction against merely descriptive treatments of single governments. Yet the result can only partly satisfy present-day political interest. The author's viewpoint, he states, is that of a constituent assembly which surveys alternatives in order that it can sketch the outlines of a governmenal organizaion upon a slate wiped conveniently clean for the purpose. Structure, then, remains the theme. The emphasis is at once new and strangely old.

The attention which is given to the administrative aspects of government chiefly distinguishes the book from its predecessors in the same field of general analysis. Its pages record the viewpoint, if not the detail, of the author's experience as director of the Institute for Government Research. Congress is suggestively mentioned in its capacity as a board of directors; a distinction is drawn between the executive and the administrative branches of government; the prob-